

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RICHARD J. ISOLDE, Individually and on	§	
Behalf of All Others Similarly Situated,	§	
	§	Case No. 3:15-cv-02093-K
Plaintiff,	§	
	§	ECF
v.	§	
	§	Judge Ed Kinkeade
TRINITY INDUSTRIES, INC., TIMOTHY	§	
R. WALLACE, JAMES E. PERRY, and	§	
GREGORY B. MITCHELL,	§	
	§	
Defendants.		

**APPENDIX IN SUPPORT OF DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION
TO MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

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Defendants Trinity Industries, Inc., Timothy R. Wallace, and James E Perry, by their
counsel, submit this Appendix in support of their reply to Plaintiffs' opposition to their motion to
dismiss Plaintiffs' Consolidated Amended Complaint and supporting memorandum.

Tab	App.	Description
43	278-285	Excerpts from trial testimony of Brian Coon, Ph.D., in case styled <i>Harman v. Trinity Industries, Inc.</i> , No. 2:12-CV-89, in the United States District Court for the Eastern District of Texas

Dated: November 18, 2016

Respectfully submitted,

s/ Yvette Ostolaza

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2016, I electronically filed the above Appendix in support of Defendants' reply to Plaintiffs' opposition to Defendants' motion to dismiss Plaintiffs' Consolidated Amended Complaint and memorandum in support thereof using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

s/ Yvette Ostolaza

Yvette Ostolaza

TAB 43

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES OF AMERICA * Civil Docket No.
EX REL JOSHUA HARMAN *
VS. * 2:12-CV-89
* Marshall, Texas
*
* October 15, 2014
*
TRINITY INDUSTRIES, INC. & *
TRINITY HIGHWAY *
PRODUCTS, LLC * 12:45 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography, transcript
produced on CAT system.)

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14 P R O C E E D I N G S

15
16 (In-chambers hearing.)

17 THE COURT: All right. I've got a few things I
18 need to take up with you, and I'm going to try and do it as
19 expeditiously as possible so we don't delay getting the jury
20 back in the box.

21 First of all, when we recessed for lunch, the
22 Court Security Officer came to me in chambers and said that
23 one of the jurors, No. 2, Mr. Kirkland, came to him and told
24 him privately on the way out to the recess for lunch that
25 something was bothering him. And he told him that during

1 BRIAN COON, Ph.D., PLAINTIFF'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. DYER:

4 Q. Good afternoon, Dr. Coon.

5 A. My name is Brian Allen Coon.

6 Q. Could you just briefly describe your formal educational
7 background?

8 A. I have a bachelor's degree in mechanical engineering
9 from the University of Iowa, a master's degree in civil
10 engineering from the University of Nebraska at Lincoln. I
11 have a Ph.D. in engineering from the University of Nebraska.
12 And I have a law degree from the University of Nebraska
13 College of Law.

14 Q. What was your course of study for your Ph.D. or your
15 doctorate?

16 A. I did accident reconstructions of guardrails and
17 guardrail end terminals.

18 THE COURT: Dr. Coon, please pull the microphone a
19 little closer. You're a bit soft-spoken. I want to make
20 sure everybody hears you.

21 Continue, Counsel.

22 MS. DYER: Thank you, Your Honor.

23 Q. (By Ms. Dyer) And what did you do for your dissertation,
24 Dr. Coon?

25 A. I developed reconstruction techniques for guardrail end

1 A. No.

2 Q. Did you ever perform any crash testing on any of the end
3 terminals that Mr. Harman made that had four-inch guide
4 channels?

5 A. The -- the custom -- I apologize, I don't remember the
6 name of them. No, I did not.

7 Q. So you never performed any type of crash testing, static
8 testing on any of the end terminals with four-inch guide
9 channels that were made by Mr. Harman?

10 A. No, I did not.

11 Q. Did you ever measure them?

12 A. No, I did not.

13 Q. Did you ever ask for one?

14 A. No, I did not.

15 Q. Did anybody ever tell you that Mr. Harman made end
16 terminals with four-inch guide channels and placed them onto
17 the roadway?

18 A. I became aware of that at some point, yes.

19 Q. When you became aware of it, did you ask to look at them
20 and -- and see how they compared to what you were saying to
21 the -- in your reports and in your testimony?

22 A. No, I did not.

23 Q. Let's talk about the flared ET testing. You understand
24 there's a difference between a tangent ET -- or a tangent
25 end terminal and a flared end terminal? Do you understand

1 the difference?

2 A. The -- the implementation, yes.

3 Q. Do you understand that the flared ET terminal test that
4 you were looking at have never been commercialized, the
5 product?

6 A. The entire terminal, as in --

7 Q. The system?

8 A. -- the posts and the line -- that is my understanding
9 that it has not been specifically marketed.

10 Q. In fact, it's never been commercialized and placed into
11 the market to -- to be sold, has it?

12 A. Not to my knowledge.

13 Q. And is that because the people at TTI determined that
14 those are failed tests?

15 A. That would be my assumption, yes.

16 Q. So when you're talking to the Ladies and Gentlemen of
17 the Jury about fail -- about a failed test for a flared ET
18 end terminal, you understood and understand now, do you not,
19 that that product has never been commercialized and has
20 never been placed on the roadway by Trinity Highway
21 Products; is that correct?

22 A. Trinity doesn't install guardrails, so no.

23 Q. Has it ever been placed on the roadway by anyone that
24 you're aware of with Trinity's approval, blessing of any
25 nature?

1 A. No blessing to my knowledge.

2 Q. Okay. And you understand that Trinity doesn't install
3 end terminals on the roadway, do they?

4 A. I apologize, I misanswered the last question.

5 Q. Okay. Do you understand that Trinity doesn't install
6 end terminals on the roadway? You understand that?

7 A. I do.

8 Q. You understand that Trinity fabricates metal and creates
9 an end terminal at its facilities. You understand that?

10 A. That's my understanding, yes.

11 Q. You understand that TTI is the designer of highway
12 safety products, including end terminals, such as the
13 ET-Plus. You understand that?

14 A. Yes, to -- it's my understanding generally.

15 Q. You understand, do you not, sir, that there are
16 differences between the experimental, never commercialized
17 flared ET end terminal and the ET-Plus like we have here in
18 front of us. You understand that, do you not?

19 A. The terminal heads were identical to what we have in
20 front of us.

21 Q. You understand, do you not, Dr. Coon, that an end
22 terminal is comprised of something more than just the head?

23 A. I can't -- the answer you asked me for was misphrased.
24 You said the terminal before us, and it's the -- the head
25 before us.

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true
and correct transcript from the stenographic notes of the
proceedings in the above-entitled matter to the best of my
ability.

/s/_Shelly Holmes_____
SHELLY HOLMES, CSR, TCR
Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/14

10/15/14
Date

/s/_Susan Simmons_____
SUSAN SIMMONS, CSR
Deputy Court Reporter
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Expiration Date 12/31/14

10/15/14
Date